

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5417 of 1987

WITH

SPECIAL CIVIL APPLICATION NO.5618 OF 1987

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GANGUMAL S SINDHI AND ORS

Versus

MODASA NAGAR PALIKA

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Appearance:

MR KS NANAVATI, Sr. Advocate with Mr Kaushal Thakker  
for Petitioners  
MR R.J. OZA FOR NAGAR PALIKA  
MR M.R.ANAND, GOVT. PLEADER WITH MRS HARSHA DEVANI,  
AGP FOR THE RESPONDENT NO.2

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 08/08/96

COMMON JUDGEMENT

1. In these two Special Civil Applications under Article 226 of the Constitution of India, say of the

petitioners is that they are running retail shops in their cabins installed in front of the S.T. Bus Stand, Modasa since last several years. However, without giving any notice and without following the process of law, in an arbitrary and high handed manner, they have been dispossessed on July 10, 1987. It is not in dispute that petitioners were sought to be dispossessed in the year 1984, and as such, they approached to this Court by way of filing Special Civil Application. The said Special Civil Application was rejected, however petitioners were given liberty to approach Secretary (Appeals), Revenue Department under the provisions of the Land Revenue Code. After decision at all level by the Revenue Authorities against them, they again approached to this Court. This Court rejected the petition and directed to remove their Larry Gallas Cabins. Inspite of High Court's order, they did not remove and as such, the State Government removed their cabins. The petitioners have approached now on the ground that Modasa Nagarpalika has not followed the procedure. This statement has been falsified by the affidavit filed on behalf of the State Government.

2. In para-9 of the affidavit filed by Mr. C.B.Parmar, Deputy Collector, Modasa, has categorically stated that the land in question is vested in the Road & Building Department of the State Government and the Modasa Nagarpalika has not removed the encroachment made by the petitioners. Again, in para-11.4, a further statement has been made that the action of removing the cabins of the petitioners was carried out by the Mamlatdar, Modasa with the assistance of the Road and Buildings Department of the State Government.

3. Thus, the petitioners ought to have vacated the premises after decision of this Court. When they did not vacate, the officers of the State Government rightly dispossessed them. It is stated that cabins are required to be removed for widening the road of Modasa town to remove traffic congestion. It is further stated that because of encroachment and illegal occupation of cabin holders on the road, the entire area has become congested. There are Educational Institutions on the road. There are large number of complaints of public for removal of the cabins for various reasons.

4. Identical petition being Special Civil Application No.5604/87 has been dismissed by this Court (Coram : A.N.Divecha, J.) on 02.08.1995, relying on similar petitions decided by this Court in Special Civil Applications No.3589/82 and 3719/82 decided on

05.08.1994. The Division Bench held that no one has right to carry on business in cabins or gallas on public roads.

5. In view of the aforesaid, there is no merits in this Special Civil Application and the same is rejected accordingly. Rule discharged. Interim relief vacated.

6. Learned counsel for the petitioners submits that the order of this Court be stayed for 10 days. The prayer deserves to be rejected. In fact, the petitioners ought to have vacated the premises when their petition was rejected in 1987, but they again obtained interim relief on the statement that they were dispossessed by the Nagarpalika, which has been found to be false. In view of this, the petitioners are not entitled to further indulgence.

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